

1987 WL 342773 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1987

*1 Patrick L. Davis, Esquire
Lancaster County Attorney
303 North Main Street
Lancaster, South Carolina 29720

Dear Mr. Davis:

By your letter of March 23, 1987, you have asked whether a county coroner may also hold the position of Director of Emergency Medical Services, created by the county and appointed by the county administrator. You enclosed a copy of the position description of the Director, Lancaster County E.M.S. You indicated that a complicating factor could emerge if the Lancaster County Coroner should be required to investigate a death where the E.M.S. was involved in trying to revive the individual. The dual office holding aspect will be addressed first.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. *Sanders v. Belue*, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office, by an opinion dated March 18, 1980, found no dual office holding problem to exist if the Lancaster County Coroner were to be employed by the Lancaster County Ambulance Service. A copy of the opinion is enclosed. The author of the opinion did not have access to the job description enclosed with your letter, and thus it is necessary to examine the job description to determine whether the previous opinion is still applicable.

The Director of the Lancaster County E.M.S. "performs administrative duties and supervises personnel engaged in operating the Emergency Medical Services Department of Lancaster County" and "provides direct supervision to the Deputy Director and the Dispatcher/EMT I." Specifically, he is responsible for planning and supervision of emergency medical services; personnel; training; reports, budgetary matters; and other related functions. He must be a high school graduate, have E.M.T. certification, and be experienced in emergency medical services. He receives a salary but is not required to take an oath. It is unclear whether his position has been created by ordinance. It would appear that the previous opinion would cover the Director of the Lancaster County E.M.S. since the Director, as a county employee, does not appear to be exercising sovereign power.

While dual office holding is therefore not a problem, the complicating factor noted in your letter as indicated above is certainly a cause for concern since the coroner as Director of the Lancaster County E.M.S. potentially could be placed in the position of having to justify his own actions or those of an employee whom he supervises in the course of his investigating the cause of death in a particular case. If the coroner should be so employed and such a situation should arise, it should be noted that a duly-appointed deputy coroner would be authorized to hold an inquest. Op.Atty.Gen. No. 4296, dated March 12, 1976, enclosed.

*2 We trust that the foregoing will be responsive to your inquiry. Please advise if we may provide clarification or additional assistance.

With kindest regards, I am
Sincerely,

Patricia D. Petway
Assistant Attorney General

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